THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 19899 of 2006

O r d e r:

The petitioner was appointed as a Driver in the respondents-APSRTC on 31.07.1995. He was issued a charge sheet dated 24.03.2001 alleging that he unauthorisedly absented from duties from 01.02.2001 to 24.03.2001, for which he did not submit any explanation. Thereupon, an enquiry was conducted, and the Enquiry Officer, having conducted the enquiry, submitted his report stating that the charges leveled against the petitioner are proved. Based on the said enquiry report, a notice dated 26.01.2001, was issued to the petitioner to show cause as to why he shall not be removed from service, and finally, the 1st respondent-Depot Manager, passed an order dated 10.12.2001 removing the petitioner from service. Assailing the said order, the petitioner preferred an appeal, which was rejected by the 2nd respondent-Divisional Manager, vide order, dated 01.09.2003. Aggrieved thereby, the petitioner filed review before the 3rd respondent-Regional Manager, and the 3rd respondent, vide order dated 29.01.2004, set aside the order of removal, passed by the 1st respondent, as confirmed by the 2nd respondent in appeal, and directed the respondents to reinstate the petitioner into service but by directed reduction of his pay by two incremental stages for a period of two years with cumulative effect and treat the suspension period as 'not on duty' for the purpose of leave, wages and increments. Questioning the said order insofar as it directed stoppage of two annual increments with cumulative effect and treating the suspension period as 'not on duty' for the purpose of leave, wages and increments,

the petitioner filed the present writ petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-APSRTC.

The learned counsel for the petitioner submitted that the 3rd respondent, having set aside the order of removal, passed by the disciplinary authority as confirmed by the appellate authority, and having directed the respondents to reinstate the petitioner into service, ought to have granted the consequential reliefs that ensue upon reinstatement, and non-granting of the same, is illegal and arbitrary, and more so when the petitioner was not gainfully employed during the period he was out of service and reinstated into service.

The learned Standing Counsel for the respondents-APSRTIC, however, supported the impugned order. He submitted that the charges against the petitioner stood proved. Though the disciplinary authority passed order of removal, which was confirmed by the appellate authority, the review authority, though concurred with the view of the disciplinary authority, has taken a lenient view and ordered reinstatement of the petitioner subject to certain conditions, namely stoppage of two increments with cumulative effect and to treat the period of suspension as 'not on duty' for the purpose of leave, wages and increments, and the same cannot be said to be an illegal or arbitrary, and prayed that no interference is called for therewith.

On the charges leveled against the petitioner, an enquiry was conducted. In the enquiry, the charges leveled against the petitioner stood proved. Based on the enquiry report, the disciplinary authority, passed an order of removal, which in appeal was confirmed. However, the review authority has taken a lenient view and ordered reinstatement of the petitioner into service subject to certain conditions, namely stoppage of two increments with cumulative effect and to treat the period of suspension as 'not on duty' for the purpose of leave,

wages and increments. The review authority, in fact, concurred with the findings of the disciplinary authority and the appellate authority that the petitioner has unauthorisedly absent from his duties. Though the review authority had concurred with the order of the appellate authority, confirming the order of the disciplinary authority, however, felt that the punishment awarded by the disciplinary authority is excessive and disproportionate to the misconduct, and accordingly set aside the order of removal, and directed his reinstatement into service by reducing his pay by two incremental stages for a period of two years which shall have effect on his future increments and treating the suspension period as 'not on duty' for the purpose of leave, wages and increments. Merely because the petitioner was directed to be reinstated into service by setting aside the order of removal, it does not mean that he is entitled to consequential reliefs, and more so when the finding of guilty conduct of the petitioner recorded by the enquiry officer, was not disturbed by the review authority. In **Karnataka Bank Ltd. v. A.L. Mohan Rao**[1], the apex Court held that it is not for the courts to interfere in cases of gross misconduct of the nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved, and that in such matters, it is for the disciplinary authority to decide what is the fit punishment.

In the above view of the matter, merely because the order of removal passed by the disciplinary authority, as confirmed by the appellate authority, was set aside by the review authority, it does not mean that the petitioner is entitled to be granted consequential reliefs, and more so because he remained out of employment during the period between the date of his removal from service and till he was reinstated by virtue of the impugned order.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Date: 26th October, 2006.
KSR

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[1] (2006) 1 SCC 63